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No.

In the Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE UNITED STATES OF AMERICA, PETITIONERS

v.

PEOPLE AGAINST NUCLEAR ENERGY, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTION PRESENTED

Whether the National Environmental Policy Act requires the Nuclear Regulatory Commission to consider stress (and accompanying physical symptoms), allegedly induced in persons residing in the vicinity of the Three Mile Island nuclear power facility by the pending proposal to authorize restart of Unit 1 of that facility (the unit not involved in the 1979 accident), in connection with its action upon that proposal, notwithstanding the absence of any causal nexus between the alleged stress and the effects of the proposed action upon the natural environment.

PARTIES TO THE PROCEEDING

In addition to People Against Nuclear Energy (the petitioner in the court of appeals), respondents include Metropolitan Edison Co., Jersey Central Power & Light Co., and Pennsylvania Electric Co. (intervenor-respondents in the court of appeals). The latter have previously filed a petition for a writ of certiorari, No. 81-2399 (filed July 1, 1982), seeking review of the judgment of the court of appeals in this case.

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v.

PEOPLE AGAINST NUCLEAR ENERGY, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of the United States Nuclear Regulatory Commission and the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (81-2399 Pet. App. 1a-76a)[1] is reported at 678 F.2d 222. The orders of the Nuclear Regulatory Commission reviewed by the court of appeals (Pet. App. 77a-78a, 101a-102a) and ancillary opinions (Pet. App. 79a-100a) are reported at 12 N.R.C. 607 and 14 N.R.C. 593.

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[1] Because the petition for a writ of certiorari filed by *Metropolitan Edison Co.*, No. 81-2399, reproduces all of the materials required by Rule 21(k), and because the Court has granted respondent leave to respond to this petition together with No. 81-2399, we refer to the petitioners' appendix in No. 81-2399, rather than duplicating the materials found there. Hereinafter, "Pet. App." signifies that appendix.

JURISDICTION

The amended judgment of the court of appeals (Pet. App. 103a-104a) was entered (without supporting opinions) on April 2, 1982.[2] A modified version of the amended judgment (Pet. App. 29a-30a) was entered on May 14, 1982, at the time opinions were entered. On June 23, 1982, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including August 20, 1982. On August 12, 1982, the Chief Justice further extended the time for filing such a petition to and including August 30, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

Sections 2, 101 and 102 of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, 4331 and 4332, are reported at Pet. App. 109a-113a.

STATEMENT

1. This case involves the Three Mile Island Unit 1 nuclear power reactor ("TMI-1"), located near Harrisburg, Pennsylvania. After preparing draft and final environmental statements and conducting an extensive safety review, the Atomic Energy Commission in 1974 granted the Metropolitan Edison Company a license to operate TMI-1, and the unit entered service. Four years later, Metropolitan Edison received a license from the Nuclear Regulatory Commission to operate a second unit at the site ("TMI-2"). On March 28, 1979, a significant accident affecting the reactor occurred at TMI-2. At the time of the accident, TMI-1 was not in operation, having been shut down by the licensee for routine maintenance and refueling. In the aftermath of the accident, the Commission directed the licensee to keep TMI-1 shut down

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[2] The April 2 judgment replaced an interim judgment (Pet. App. 105a-107a) issued by the court of appeals, also without opinions, on January 7, 1982.

pending further order of the Commission and announced that it would conduct a hearing to determine whether, and under what circumstances, the licensee should be allowed to resume operation of the plant (Pet. App. 3a-4a). 44 Fed. Reg. 40461 (1979).

By further order, the Commission specified the issues to be addressed by the Atomic Safety and Licensing Board designated to conduct the "restart" proceeding. All related to concerns which the accident at TMI-2 had raised about the safety of TMI-1. *In re Metropolitan Edison Co.*, 10 N.R.C. 141 (1979). They included deficiencies in the design common to the two reactors, the potential for interaction between the plants, the possible effect on TMI-1 of the decontamination of TMI-2, the management capability of the licensee, and deficiencies in the licensee's operating procedures and emergency plans. The Commission added that although accident-related psychological distress on the part of members of the public living near TMI that was "unrelated directly to exposure to radiation" was the subject of "real and substantial concern," it had not yet determined whether such issues "c[ould] legally be relevant to th[e] proceeding." *Id.* at 148. The Commission accordingly invited parties wishing to raise such contentions to address the pertinent legal issues in briefs to the Atomic Safety and Licensing Board, which was directed to certify the issue to the Commission for decision, with or without its own recommendation.

Respondent, People Against Nuclear Energy ("PANE"), an organization composed of TMI neighbors that had intervened in the restart proceeding, responded to the Commission's invitation, submitting two draft contentions for consideration, and arguments that their consideration was legally mandated by the Atomic Energy Act of 1954, 42 U.S.C. (& Supp. IV) 2011 *et seq.*, and the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* ("NEPA"). PANE alleged, first, that the resumed operation of TMI-1 would exacerbate the "severe psychological stress" which its members and other residents of the TMI area had suffered as a result of the accident at

TMI-2. PANE stated that the prevailing stress took the form of "increased anxiety, tension and fear, [and] a sense of helplessness," accompanied by physical symptoms such as skin rashes, aggravated ulcers, and skeletal and muscular problems. PANE alleged that continuing injury to the health of TMI neighbors would result "[a]s long as th[e] possibility [that TMI Unit 1 will reopen] exists" and that it was accordingly "impossible * * * to operate TMI 1 without endangering the public health and safety" (Pet. App. 115a). For its second contention, PANE asserted that resumption of operations at TMI-1 would cause communities in the vicinity of TMI to be perceived as undesirable, thereby exacerbating damage to their economic and social "stability, cohesiveness and well being" caused by "a loss of citizen confidence in the ability of [community] institutions to function properly and in a helpful manner during a crisis" resulting from the aftermath of the 1979 TMI-2 accident. PANE urged that for this additional reason, TMI-1 should never again be allowed to operate (*id.* at 116a).

2. On February 22, 1980, the Licensing Board issued its "Certification to the Commission on Psychological Distress Issues." *In re Metropolitan Edison Co.*, 11 N.R.C. 297 (1980). The Board concluded that the alleged "psychological stress is probably not cognizable under the Atomic Energy Act * * * because such effects are not radiation hazards. *Id.* at 299.[3] On the other hand, the Board concluded that the "Commission, within its discretion, may and should consider psychological stress and community fears for the purpose of mitigating the effects

[3] The Board added that "the Commission might conclude to the contrary for reasons not discussed by the parties." 11 N.R.C. at 299. The Board apparently meant to suggest that the Commission itself had discretion to conclude that PANE's allegations of a mental health effect rested in part upon "radiological hazards associated with accident conditions" and were accordingly cognizable under the Atomic Energy Act. The Board thought that either position adopted by the Commission on this question of interpretation of its governing statute would be entitled to substantial deference and would withstand judicial review. *Id.* at 299-300.

of its TMI 1 licensing activity." 11 N.R.C. at 297, 309.[4] Rejecting the Commission staff's contention that stress and community fears are not cognizable under NEPA because unquantifiable, the Board found "a sufficient prehearing basis for the premise that the effects are measurable," stressing that "[p]recise numerical quantification is not necessary" (*id.* at 302).[5] Acknowledging that

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[4] The Licensing Board rejected the Commission staff's contention that psychological effects of restart authorization are not cognizable under NEPA because not traceable to a "direct impact upon the physical environment." 11 N.R.C. at 300-301. Accepting the staff's premise that such a nexus was required, the Board reasoned, however, that (*id.* at 301):

> [t]he psychological stress alleged by the intervenors here is related to a significant physical environmental impact: the operation of TMI 1 coupled with residual effects of the accident at TMI 2. * * * The very fact that an [environmental impact statement] and cost/benefit balancing [were undertaken at the time TMI was initially licensed] is a recognition of the fact that the operation of TMI 1 involves a significant physical impact upon the environment.

[5] The Board distinguished cases in which the courts of appeals have held psychological and socioeconomic effects of agency action to lie outside the scope of NEPA analysis. See, *e.g.*, *Hanly* v. *Kleindienst*, 471 F.2d 823 (2d Cir. 1972), cert. denied, 412 U.S. 908 (1973) (*"Hanly II"*) *Maryland-National Capital Park and Planning Commission* v. *Postal Service*, 487 F.2d 1029, 1037-1038 (D.C. Cir. 1973); *First National Bank of Chicago* v. *Richardson*, 484 F.2d 1369, 1375 (7th Cir. 1973); *Nucleus of Chicago Homeowners Association* v. *Lynn*, 524 F.2d 225 (7th Cir. 1975), cert. denied, 424 U.S. 967 (1976); see also *Como-Falcon Coalition, Inc.* v. *Department of Labor*, 465 F. Supp. 850, 857 n.2 (D. Minn. 1978), aff'd, 609 F.2d 342 (8th Cir. 1979), cert. denied, 446 U.S. 936 (1980). The Board stressed that none of these decisions *precludes* agency consideration of mental health or socioeconomic effects associated with federal action. The Board noted, as well, that many of the foregoing cases involved "the argument that the mere presence of a disadvantaged group of people could constitute a pollution to the enviro[n]ment of a higher socio-economic group," an argument with unacceptable overtones of racial and class discrimination, which, as a matter of policy, was to be excluded from environmental analysis. By contrast here, the Board thought "there [were] no overriding national policies preventing the frank acknowledgement that the pres-

there was no evidence before it that methods existed that "would permit the measurement of the psychological stress phenomenon well enough for use in a full-scale cost/benefit balancing in an [environmental impact statement]," and suggesting that it was within the Commission's discretion to determine whether or not its staff should be directed to develop the necessary methodology, the Board nonetheless concluded that NEPA permitted consideration of the alleged stress in some fashion, even though preparation of a formal environmental impact statement (EIS) or even a threshold environmental impact appraisal (EIA) addressing this subject might not be required or even possible. 11 N.R.C. at 299, 304-305, 306-307.

The Licensing Board also rejected the contention, advanced by the licensee and the Commission staff, that the alleged stress is not cognizable under NEPA in the setting of this case because the fears that are alleged to occasion it are not rationally grounded. 11 N.R.C. at 303-304. The Board observed that the TMI-2 accident underscored the fundamental premise of the Atomic Energy Act, that nuclear power improperly controlled is a source of danger, and "urge[d] the Commission to reject out-of-hand" this contention, suggesting that "fears of TMI 1 operation" are cognizable under NEPA because "they are * * * amenable to mitigation." *Id.* at 304. The Board acknowledged that "the best way to minimize any psychological stress in the communities around TMI 1 is to make the plant safe or not allow it to operate." *Id.* at 308. The Board nonetheless suggested that even if the licensee had totally satisfied the requirements of the Atomic Energy Act, for instance respecting monitoring of radiation released from the plant, consideration under NEPA of stress effects might prompt the Commission to require the licensee to install additional monitoring devices to reduce public apprehension. *Ibid.* The Board further reasoned that giving TMI neighbors the opportunity to

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ence of the impacting force (operation of TMI 1) * * * may be considered * * *." 11 N.R.C. at 303.

voice their fears in the restart proceeding would in and of itself constitute a significant stress mitigation strategy. *Ibid.*

3. On December 5, 1980, the Commission issued an order (Pet. App. 77a-78a) directing that contentions based on "psychological stress" be excluded from the restart proceedings. The order reflected that the four Commissioners then in office were evenly divided as to whether the stress issue should be considered by the licensing board, and that the procedural effect of the tie vote was to exclude the stress issue from the proceedings. The order indicated further that the issue would be reconsidered when the vacant fifth seat on the Commission had been filled.

No opinion for the Commission was issued. Instead each Commissioner wrote separately explaining his vote. Chairman Ahearne concluded that "an NRC licensing action is not an appropriate forum for psychological stress issues" (Pet. App. 79a). He maintained that stress is not cognizable under the Atomic Energy Act, and described "the issue of whether NEPA provides sufficient authority to impose mitigation measures on the licensee in the context of the restart proceeding" as "problematical" (*id.* at 80a). He accordingly concluded that the Commission's only obligation respecting stress was to mitigate any such effects by ensuring that TMI-1 is safe before restart is authorized.

Emphasizing that "the psychological stress at issue is not that associated with actual exposure to radiation—but the stress caused by the possibility that [respondent's members] and others might be so exposed by future operation," and that "[t]here is no way to allay that fear except not to build or operate the reactor" (Pet. App. 82a), Commissioner Hendrie agreed that neither the Atomic Energy Act nor NEPA required consideration of respondents' contentions respecting stress, as such, and that the Commission's obligation was, instead, to ensure that TMI-1 is operated safely, and that the public is adequately informed of the relevant facts (*id.* at 82a-

91a). Commissioner Hendrie concluded that Congress did not intend that the Commission consider stress in licensing decisions under the Atomic Energy Act (*id.* at 83a-87a). Respecting NEPA, Commissioner Hendrie relied upon the weight of federal appellate authority placing psychological effects outside the scope of the required environmental analysis. He rejected PANE's suggestion that the physical manifestations of the alleged stress served to distinguish this case, explaining (Pet. App. 89a):

> Presumably, psychological distress will always be accompanied by physical symptoms in a certain proportion of the persons affected. As a legal matter, I see no basis for differentiating between psychological stress that has physical symptoms and that which is without physical manifestations * * *. In either case, the problems of quantification and proof would be such as to make rational factfinding extremely difficult * * *.

Commissioner Hendrie argued that the nature of the alleged effects of the restart decision upon mental health rendered considerations of mitigation mandated by NEPA irrelevant (*ibid.*):

> If anxieties are rationally based, the corrective measures which would alleviate the stress would presumably be justifiable in terms of protecting physical health and safety [under NEPA or the Atomic Energy Act]—irrespective of their effect on psychological stress. If the anxieties are irrationally based, on the other hand, then they are by definition not likely to be alleviated by a demonstration that some additional safety feature has been added.

Finally, Commissioner Hendrie underscored that stress occasioned by fear of operation of TMI-1 was unrelated to any environmental impact of operation and was accordingly entirely outside the intended scope of NEPA (*id.* at 90a-91a; emphasis in original):

> NEPA is a very broad statute and has had, as it was intended to have, a profound effect upon agency decision making. But unless it is to displace the po-

litical process it must have some limits. It cannot be read to require that all conceivably relevant factors be heard by an agency including those already considered by Congress. It was intended and must be so construed to deal with *environmental* degradation. To be sure if one of a project's effects on the environment causes health problems, the associated mental impacts are in [*sic*] an appropriate consideration, but here we are being asked to consider effects apart from any effect upon the environment.

Intervenors' argument is essentially that even if we are satisfied that the environmental impact is minimal, we must nevertheless hear evidence on, and consider in our decision, their fears that we are wrong and the mental stress thus engendered. The short answer is that Congress has already decided that the country is to have a nuclear power program even if it makes some people uneasy.

Commissioners Gilinsky and Bradford would have directed the Licensing Board to hear evidence respecting stress effects, Commissioner Gilinsky (Pet. App. 91a-92a) relying primarily upon the Licensing Board's analysis. Commissioner Bradford argued (*id.* at 93a-100a) that the TMI-2 accident made the TMI-1 restart hearing a unique one and that, under the circumstances, an important means of alleviating stress that might be occasioned by the Commission's decision would be to allow full airing of the stress issue before the Licensing Board.

4. On February 3, 1981, pursuant to 28 U.S.C. (Supp. IV) 2342(4) and 42 U.S.C. 2239(b), PANE filed a petition for review of the Commission's order excluding the issues it sought to raise from the restart hearing.[6] On ap-

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[6] On September 17, 1981, after the vacancy on the Commission had been filled, the Commission, by a majority vote, reaffirmed its directive that the stress issue was excluded from the restart proceeding (Pet. App. 7a, 101a-102a). No opinion for the Commission was issued.

During the restart proceedings several parties argued that preparation of an EIS was required before any decision respecting re-

peal, PANE argued that both NEPA and the Atomic Energy Act required the Commission to consider the psychological stress contentions in the restart proceeding. Specifically, PANE asserted that whether the "major federal action" in question was considered to be the restart of TMI-1 itself, or its original licensing coupled with continued NRC regulation, psychological stress and community deterioration were impacts requiring evaluation in an environmental impact statement or supplemental statement (Pet. App. 10a). PANE further asserted that the Commission's responsibility under the Atomic Energy Act to protect "public health and safety" encompassed psychological health.

The Commission argued, however, that the projected restart of TMI-1 did not require further environmental analysis under NEPA because an EIS had been prepared when operation of the TMI-1 plant first was authorized and because the restart decision itself did not represent a proposal for federal action within the meaning of NEPA, since it would restore the status quo as it existed before the Commission required the plant to remain shut down pending investigation of the accident at TMI-1 and its implications. Even if there were a proposal for federal action, the Commission argued, stress occasioned by operation of a nuclear power plant was not the type of effect which required evaluation in an environmental impact statement. Similarly, the Commission contended

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start could be made. The Commission staff disagreed, but, pursuant to Commission regulations, prepared an environmental impact assessment to support that determination. The EIA was issued on March 27, 1981, and supplemented on May 11, 1981, but in accordance with the Commission's directive to the Licensing Board, neither document addressed the alleged stress effects of the restart proposal. On December 15, 1981, while this case was under submission to the court of appeals, the Licensing Board rendered a decision that the EIA was adequate and that no EIS was required. Because the decision of the court of appeals requires further agency action, and because the TMI-1 plant is not yet physically ready for restart for reasons unrelated to this case, the Commission itself has yet to take final action respecting NEPA compliance (Pet. App. 7a n.3).

that its duty under Section 103(d) of the Atomic Energy Act, 42 U.S.C. 2133(d), to deny any license the issuance of which "would be inimical to * * * the health and safety of the public" comprehended the physical hazards associated with nuclear materials but not the psychological effects arising from fears of nuclear technology. The TMI licensee, which had intervened in the court of appeals took essentially the same position.

A panel of the court of appeals, Circuit Judges Wright and Wilkey and Senior Circuit Judge McGowan, heard oral argument on November 17, 1981. On January 7, 1982, the court issued an interim judgment unaccompanied by an opinion for the court, from which Judge Wilkey dissented (Pet. App. 105a-107a). The judgment vacated the Commission's order and directed the Commission to prepare an environmental assessment regarding the effect of the proposed restart of TMI-1 on the "psychological health of neighboring residents and on the well-being of the surrounding communities" (*id.* at 106a). The Commission was further ordered to determine, on the basis of this environmental assessment, whether to prepare a full environmental impact statement. The Commission was enjoined from making any decision to restart TMI-1 until it had complied with these requirements. In addition, the Commission was directed to submit a statement of its reasons for believing psychological health not to be cognizable under the Atomic Energy Act.[7]

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[7] On March 30, 1982, the Commission issued a "Memorandum and Order" responding to the court's directive (Pet. App. 8a). Relying on the text and legislative history of the Atomic Energy Act, as well as pertinent judicial decisions, the Commission asserted that Congress intended that, in administering the Atomic Energy Act, it address itself only to the physical hazards associated with nuclear materials and activities. The Commission added that even if its statutory authority under the Act were broad enough to permit the discretionary consideration of mental health effects, strong policy considerations counseled against doing so. The Memorandum and Order was adopted by a 3-1 vote, with Commissioner Gilinsky dissenting and one seat on the Commission vacant.

On April 2, 1982, the court of appeals issued an amended judgment (Pet. App. 103a-104a), promising opinions to follow, again over Judge Wilkey's dissent. The amended judgment differed from the prior judgment in several respects. First, the Commission was no longer required to prepare an environmental assessment, but was instead directed to determine, by whatever procedures it deemed appropriate, whether, since the preparation of the original environmental impact statement on TMI-1, "significant new circumstances or information have arisen with respect to the potential psychological health effects of operating the TMI-1 facility" (*id.* at 104a). If the Commission answered that question in the affirmative, it was to prepare a supplemental environmental impact statement addressing both psychological health effects on individuals and effects on the well-being of the surrounding communities of operating TMI-1. Second, the court of appeals vacated the previously issued injunction against restart, explaining that because of "operating difficulties" at TMI-1 of which it took notice (discovery of a corrosion problem in the plant's steam generators that necessitates major repairs before restart), the injunction against restart was unnecessary. The court directed the Commission, however, to give 30 days' notice if it intended to permit renewed operation "prior to complying with its obligations under NEPA" (*ibid.*). The amended judgment made no reference to the Atomic Energy Act.

On May 14, 1982, the court of appeals issued its opinions (Pet. App. 1a-76a).[8] Judge Wright, joined by Judge McGowan, with Judge Wilkey dissenting, held that NEPA requires consideration in the restart proceeding of petitioner's contentions respecting psychological stress. At the same time, a different majority, Judge Wilkey, joined by Judge McGowan, with Judge Wright dissenting, upheld as reasonable the Commission's interpretation of its duties under the Atomic Energy Act, excluding from considera-

[8] A modified version of the amended judgment (Pet. App. 29a-30a) resting upon the opinions for the court was also issued.

tion in licensing actions "stress allegedly resulting from fear of a nuclear accident" (*id.* at 67a).

On the NEPA issue, Judge Wright declared that "[b]oth [of PANE's] contentions allege environmental effects within the meaning of NEPA" (Pet. App. 10a). He deemed it inconceivable that all mental health effects, no matter how severe, of any proposed federal action, whatever its nature, are outside the scope of NEPA (*id.* at 11a, 17a). Accordingly, he reasoned that mental health effects of proposed federal actions are cognizable under NEPA because effects on health have generally been regarded as within the scope of NEPA, and because of "the simple fact that effects on psychological health are effects on the health of human beings" (*id.* at 11a-12a). The court distinguished cases holding that the social fears and anxieties of persons residing near proposed federal projects are not environmental effects cognizable under NEPA see page 5 note 5, *supra*), observing that "[n]one of these cases * * * presents the holocaust potential of an errant nuclear reactor" (Pet. App. 15a).[9] Disavowing establishment of any general rule, the court acknowledged that "NEPA does not encompass mere dissatisfactions arising from social opinions, economic concerns, or political disagreements with agency policies" (*id.* at 16a), but held that NEPA does apply to mental health effects of federal actions, if sufficiently grave, such as the "post-traumatic anxieties, accompanied by physical effects and caused by fears of recurring catastrophe" (*id.* at 16a-17a). Without attempting to identify a benchmark for other cases, the court simply stated (*ibid.*):

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[9] Distinguishing earlier court of appeals decisions excluding from NEPA analysis claims that federal projects would induce influxes of "undesirable" persons into the impacted neighborhood, the court proclaimed (Pet. App. 16a):

> In this case, in contrast, PANE is not asking the agency to evaluate the effect of "people pollution" on the environment, but rather the effect of a governmental decision on human health.

> We cannot believe that the psychological aftermath of the March 29 [TMI-2] accident falls outside the broad scope of the National Environmental Policy Act [10]

The court also rejected the Commission's alternative argument that the restart proceeding involved no proposal for federal action subject to NEPA (Pet. App. 18a-23a). Disavowing any reliance upon "the happenstance that TMI-1 was shut down for refueling at the time of the accident," however, the court instead stated that "the extent of the Commission's statutory responsibilities over licensed nuclear power facilities creates a continuing obligation to comply with NEPA" and that "[t]he 'major federal action' in the case of TMI-1 is not solely the initial licensing decision, but the Commission's continued exercise of supervisory responsibility over its operation and maintenance" (*id.* at 18a-19a). Treating NRC's regulation of its license as a continuing proposal for major federal action significantly affecting the environment, the court invoked the criteria for supplementation of an EIS prescribed by the Council on Environmental Quality NEPA regulations, directing that the agency prepare a supplemental EIS covering stress as well as the socioeconomic issues raised by PANE (see pages 3-4, *supra*), if it determined that "significant new circumstances or information" regarding the mental health effects of operating TMI-1 had arisen since completion of the EIS prepared at the time of initial licensing (Pet. App. 23a-26a).

Judge Wilkey dissented from the court's NEPA holding (Pet. App. 31a-59a, 67a-69a). He stated his view that

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[10] Respecting PANE's allegation of socioeconomic effects, the court of appeals accepted the Commission's concession that this presents a "classical 'socioeconomic' issue" constituting a secondary indirect effect which, under the regulations of the Council of Environmental Quality and pertinent precedents, does not in and of itself require preparation or supplementation of an EIS, but which must be addressed if other matters require such formal NEPA analysis (Pet. App. 17a-18a).

the majority had effected an unprecedented expansion of the scope of NEPA by requiring consideration of stress resulting from fears of a federal action—*i.e.*, an effect that is not traceable to the actual environmental impact of the activity to be licensed by the federal action (*id.* at 36a-38a; footnotes omitted; emphasis in original):

> Judge Wright's opinion cites several cases holding that agencies must prepare an EIS when there is a potential effect on human health. What the opinion does not acknowledge is that in each of these cases the effect on health was caused by the federal action itself, *not* by individual's *fears* of the federal action. * * *
>
> [O]peration of a nuclear power plant may cause harm to human health—for example, due to the potential for exposure to radiation—and the NRC must therefore prepare an EIS and consider these potential harms before licensing the plant. * * *
>
> PANE's contention, however, is not that operation of TMI-1 will affect human health because of the dangers inherent in operation of a nuclear facility, but that individuals' *fears* of an accident at the plant, combined with their lack of confidence in the NRC, will lead to an extension of the psychological stress allegedly caused by the TMI-2 accident. It is patently obvious that this alleged effect is *entirely different* from those health effects at issue in any NEPA case relied upon by the majority. Instead of being required to assess *the risk* of a proposed activity * * * the agency is now required to assess *how people perceive and react to the risk.* PANE's primary purpose is to force the agency to determine whether people so fear renewed operation of TMI-1 that it should not go forward, even if the agency's assessment of the actual risk indicates that the impact on health will not be significant.
>
> This takes NEPA far beyond its intended purpose. *The environmental effects of a federal activity are now to include the views of the population itself on the very desirability of the activity* * * *.

Judge Wilkey noted that the majority's holding was contrary to decisions of other courts of appeals, as well as a prior decision of the District of Columbia Circuit (Pet. App. 39a-40a & nn. 19-21). He argued, as well, that the mental health effects alleged by PANE are too ephemeral, speculative and subjective to be measured for purposes of environmental analysis (*id.* at 40a-42a). Finally, Judge Wilkey found insupportable the majority's efforts to confine its ruling to the facts of this case, explaining that the severity of an effect relates only to the nature and extent of the analysis required by NEPA and not to the threshold question whether the effect is an environmental impact within the scope of NEPA (*id.* 42a-48a).[11]

REASONS FOR GRANTING THE PETITION

This case presents a fundamental question under the National Environmental Policy Act (NEPA). In requiring that the Nuclear Regulatory Commission consider

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[11] Judge Wilkey also rejected the majority's view that the initial licensing and ensuing oversight regulation of the TMI-1 facility constituted for NEPA purposes a single continuing major federal action (Pet. App. 48a-50a). He noted that under the majority's analysis "the fact that * * * the NRC is proposing to restart the plant is irrelevant." That analysis, Judge Wilkey explained, is inconsistent with the requirements of NEPA, which governs only proposed actions. Judge Wilkey appears to have concluded that because TMI-1 was shut down, the Commission's restart decision constituted federal action for NEPA purposes (*id.* at 50a). He stressed, however, that the majority's analysis was exceedingly broad and would effect a substantial and unwarranted increase in the NEPA obligations of NRC and all other federal agencies. For instance (*id.* at 49a):

> [U]nder the majority's interpretation, the NRC is engaged in * * * "action" [subject to NEPA] every second of every day. It thus will be possible for NEPA to apply even when a nuclear plant is operating pursuant to an NRC license and the NRC proposes to take no action to upset this status quo.

stress associated with renewed operation of the TMI-1 facility, the court of appeals lost sight of the terms of Section 102(2)(C) of NEPA which establishes the obligation to prepare a "detailed statement" to accompany "every recommendation or report on proposals for * * * major Federal actions significantly affecting the quality of the human environment." Rather than directing a survey of *all effects* of such an action, the statutory requirement is to canvass *"the environmental impact of the proposed action"* (42 U.S.C. 4332(2)(C)(i)). The court of appeals' analysis, discarding this limitation, and extending the NEPA obligation to encompass all effects upon the welfare of mankind that plausibly may be assigned the label "health," imposes a substantial burden upon all federal agencies and does not advance the objectives of the National Environmental Policy Act. The decision of the court of appeals is, in this respect, contrary to numerous decisions of the other courts of appeals. Because of the onerous consequences the ruling below will have for all federal decision-making, the judgment of the court of appeals should be reviewed by this Court.[12]

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[12] If free to do so, we would also present for review the question whether NEPA imposes upon the Nuclear Regulatory Commission a continuing obligation to reassess the environmental impacts of a licensing decision in light of changed circumstances or information even in the absence of any proposal for further federal action. The majority opinion below (Pet. App. 18a-26a) appears to give an affirmative answer that is irreconcilable with this Court's decisions in *Weinberger* v. *Catholic Action of Hawaii*, No. 80-1377 (Dec. 1, 1981), slip op. 6-7; *Kleppe* v. *Sierra Club*, 427 U.S. 390, 398-406 (1976); and *Aberdeen & R. R.R.* v. *SCRAP*, 422 U.S. 289, 320, 322 (1975). We do not tender that issue for review only because the result in this case probably does not turn upon its resolution. As Judge Wilkey observed (see page 16 note 11, *supra*), the application of NEPA in this case could rest upon the far narrower ground that the NRC is here engaged in federal action—the restart proceeding. Indeed, whether required to do so or not, the Commission staff actually prepared an environmental impact appraisal here, determining on that basis that no EIS was required (see page 9 note 6, *supra*). In this setting the question whether

1. As in other contexts, questions of statutory interpretation under the National Environmental Policy Act must begin with the pertinent statutory language. *Andrus* v. *Sierra Club*, 442 U.S. 347, 356 (1979). The duty of federal agencies to file environmental impact statements arises from Section 102 of NEPA, 42 U.S.C. 4332, which provides, in pertinent part:

> The Congress authorizes and directs that, to the fullest extent possible: * * * (2) all agencies of the Federal Government shall—
>
> * * * * *
>
> (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—
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> (i) the environmental impact of the proposed action * * *.[18]

As the statutory language plainly reflects, the duty imposed is not to assess all effects of proposals for federal

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such NEPA compliance was actually required by law lacks the general importance of the issue that we have tendered for review. And because of the availability of the narrower ground suggested by Judge Wilkey, the question whether the court of appeals' continuing obligation analysis (which may be dictum) is sound is not presented in sharp focus here. Should the Court disagree with this assessment, however, and conclude that the issue is properly presented, we should not be understood to have waived that question. Cf. *Piper Aircraft Co.* v. *Reyno*, No. 80-848 (Dec. 8, 1981), slip op. 10 n.12.

[18] The obligation to prepare environmental assessments and to undertake other forms of preliminary environmental analysis less formal than the full environmental impact statement contemplated by Section 102(2)(C) has been interpolated into the Act by the courts, see *e.g.*, *Hanly* v. *Kleindienst*, 471 F.2d 823 (2d Cir. 1972), cert. denied, 412 U.S. 908 (1973) (*"Hanly II"*), and through the regulations promulgated by the Council on Environmental Quality, see 40 C.F.R. 1501.3, 1501.4(b) and (c), as a means of enforcing the requirement of preparation of environmental impact statements.

action, but only to consider the *environmental* impacts of the agency proposal.

Although the precise issue presented by our petition has never been addressed by this Court—presumably because a negative answer to the generic question presented has been self-evident—the decisions rendered by the Court in this field reflect the exclusively environmental focus of the assessment duties imposed by NEPA. Thus, for instance, the Court has explained that "NEPA * * * create[s] a discrete procedural obligation on Government agencies to give written consideration of environmental issues in connection with certain major federal actions." *Aberdeen & R. R.R.* v. *SCRAP*, 422 U.S. 289, 319 (1975). The EIS has been characterized as a "detailed statement of environmental consequences," *Kleppe* v. *Sierra Club*, 427 U.S. 390, 394 (1976), and the Court has explained that (*Andrus* v. *Sierra Club*, *supra*, 442 U.S. at 350)):

> The thrust of § 102(2)(C) is * * * that environmental concerns be integrated into the very process of agency decision making. The "detailed statement" it requires is the outward sign that environmental values and consequences have been considered * * *.

See also *Weinberger* v. *Catholic Action of Hawaii*, No. 80-1377 (Dec. 1, 1981), slip op. 3. Although "NEPA does create * * * a right of action in adversely affected parties to enforce" its requirements (*Aberdeen & R. R.R.* v. *SCRAP*, *supra*, 422 U.S. at 319), the Court has repeatedly emphasized that the role entrusted to the courts is strictly delimited: "once an agency has made a decision subject to NEPA's procedural requirements, the only role for a court is to ensure that the agency has considered the environmental consequences * * *." *Strycker's Bay Neighborhood Council, Inc.* v. *Karlen*, 444 U.S. 223, 227 (1980); see also *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 558 (1978); *Kleppe* v. *Sierra Club*, *supra*, 427 U.S. at 410 n.21.[14]

[14] The intended focus on environmental effects of proposed federal action is underscored by the Council on Environmental Quality's

As Judge Wilkey and Commissioner Hendrie each recognized (see pages 7-9 and 14-16, *supra;* Pet. App. 36a-38a, 90a-91a), the consideration of stress allegedly induced by the fear of operation of TMI-1 (and, indeed, by the pending proposal itself) effects a fundamental and dramatic expansion of the scope of analysis under NEPA. Significantly, the gravamen of PANE's allegations is not that the Commission has failed adequately to consider some kind of environmental degradation in any form. Nor is it that some impact of TMI-1 operation upon the natural environment—such as radiation—will cause injury to the health (whether mental or physiological) of its members that has been inadequately considered. Compare *Weinberger* v. *Catholic Action of Hawaii, supra,* slip op. 2. Rather, PANE's allegation is that the existence of the plant itself, apart from any environmental impact it might create, will cause emotional injury to TMI-1's neighbors.

As Judge Wilkey observed (Pet. App. 36a), it is not sufficient to reason, as did the majority (*id.* at 11a-12a), that mental health is health for NEPA purposes; for health effects, like any other class of effects of a federal

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NEPA regulations, to which substantial deference is due. See *Andrus* v. *Sierra Club, supra,* 442 U.S. at 357-358. Although the regulations supply no definition of the term "environmental," they provide that the statutory term "human environment" embraces "the natural and physical environment and the relationship of people with that environment." 40 C.F.R. 1508.14. And although the regulations specify that the environmental impacts to be addressed include both direct and indirect effects that are "caused by the action" including "ecological * * * aesthetic, historic, cultural, economic, social, or health" effects (40 C.F.R. 1508.8), the regulations make clear that such effects are not cognizable under NEPA unless traceable to the impact of the federal action upon "the natural and physical environment and the relationship of people" thereto. The regulations accordingly specify that "economic or social effects are not intended by themselves to require preparation of an impact statement" and that when a statement is otherwise required, it shall address economic or social effects only to the extent that they are "interrelated" with "natural or physical environmental effects." 40 C.F.R. 1508.14.

action generally cognizable under NEPA, are cognizable only to the extent that they are proximately traceable to the impact of the federal action on the natural and physical environment. The range of possible causes of psychological stress is almost unlimited. Bringing all of those within NEPA would radically change that law from an environmental statute to one that deals generally with human emotions. Assuming that psychological effects are reached by NEPA, only those that are caused by environmental factors are covered.[15] Absent such a proximate causal nexus, the effect of federal action simply does not qualify as an "environmental impact" required to be analyzed under NEPA.

Thus, while effects of federal action upon human health may occasion NEPA analysis, the statutory requirement is necessarily limited to environmentally-generated health effects—a fundamental limitation upon agency responsibility under NEPA that was entirely disregarded by the court of appeals.[16] The issue for NEPA purposes, was not,

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[15] Because the court of appeals' decision completely disregards this fundamental limitation upon the scope of the analysis required by NEPA, we have not pursued here the question whether the particular mental health effects alleged by PANE are outside the scope of NEPA for the independent reason that the chain of causation between the federal action and the alleged effects may be so lengthy and attenuated, and the effect so speculative, as to render NEPA analysis unnecessary. Clearly, there are situations in which effects of federal action, psychological or otherwise, are outside the scope of the mandated NEPA analysis for this reason. *Cf. Vermont Yankee Nuclear Power Corp.* v. *NRDC, supra*, 435 U.S. at 551. The private petitioners' submission appears to be broader than our own in this respect. See 81-2399 Pet. 17-18.

[16] It has never been suggested, so far as we are aware, that, for instance, the Food and Drug Administration must file EIS's pertaining to drug approval actions. See, *e.g.* 21 C.F.R. 25.1(f). Yet the logic of the court of appeals' decision, that NEPA analysis was required here because NRC proposed to make "a government decision [affecting] human health" (Pet. App. 16a) is surely applicable to those decisions, even though we trust that no one would seriously

as the court of appeals assumed, whether NEPA requires consideration of environmentally-generated mental health effects of federal actions. Rather, the relevant inquiry is whether stress that allegedly arises from the political facts that TMI-1 exists and that the Commission has authority delegated by Congress to license its renewed operation—a cause entirely distinct from the radiation or accident potential associated with plant operation—is cognizable under NEPA.[17] The plain statutory language requires a negative answer.[18]

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suggest the health effects of such decisions are propagated through the natural or physical environment in the sense Congress meant to address.

[17] It was accordingly irrelevant to the question presented for decision that the majority, unsurprisingly perhaps, found it difficult to believe that "[r]egardless of the severity of psychological health effects * * * [they] would [be] exclude[d] from consideration at any stage of the NEPA procedures relating to any proposed federal action" (Pet. App. 11a). Equally misplaced was the majority's reliance (*id.* at 13a) upon language of Section 102(2)(A) of NEPA, 42 U.S.C. 4332(2)(A), requiring use of a "systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts." The court of appeals failed to give any consideration to the purpose that this interdisciplinary approach was to serve, stated in the language that immediately follows the quoted phrase—"in planning and in decisionmaking which may have an impact on man's environment."

[18] The legislative history of NEPA underscores that Congress intended to require consideration only of the effects of environmental impacts of federal action—*i.e.*, of those effects traceable to some measurable or physically discernible influence upon, or alteration of, the physical environment. Senator Jackson, the "father" of NEPA, and the senior manager on the part of the Senate in the Conference Committee that had produced NEPA, explained this nexus and its relevance to human health (115 Cong. Rec. 40416 (1969)):

> What is involved is a congressional declaration that we do not intend, as a government or as a people, to initiate actions which

The decision of the court of appeals is in tension with fundamental principles established under NEPA in other respects as well. It is well established that NEPA imposes upon the concerned federal agency the responsibility for determining the environmental impacts of proposed action. *Strycker's Bay Neighborhood Council, Inc.* v. *Karlen, supra,* 444 U.S. at 227; *Vermont Yankee Nuclear Power Corp.* v. *NRDC, supra,* 435 U.S. at 558; *Kleppe* v. *Sierra Club, supra,* 427 U.S. at 410 n.21. In doing so, the agency may be required to consider eventualities that are not certain

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endanger the continued existence or the health of mankind: That we will not intentionally initiate actions which will do irreparable damage to the air, land and water which support life on earth.

Both the Senate Report on the bill that supplied the pertinent language of NEPA (S. Rep. No. 91-296, 91st Cong., 1st Sess. 4 (1969)) and Senator Jackson's remarks presenting the Conference Report (115 Cong. Rec. 40417 (1969); emphasis added) contain a revealing listing of perceived environmental quality problems:

> * * * haphazard urban and suburban growth; crowding, congestion and conditions within our central cities which result in civil unrest *and detract from man's social and psychological well-being*; the loss of valuable open spaces; inconsistent and often, incoherent rural and urban land-use policies; critical air and water pollution problems; diminishing recreational opportunity; continuing soil erosion; the degradation of unique ecosystems; needless deforestation; the decline and extinction of fish and wildlife species; faltering and poorly designed transportation systems; poor architectual design and ugliness in public and private structures; rising levels of noise; the continued proliferation of pesticides and chemicals without adequate consideration of the consequences; radiation hazards; thermal pollution; an increasingly ugly landscape cluttered with billboards, powerlines, and junkyards * * *.

Significantly, each of the effects listed is rooted in a discernible impact upon the natural or physical environment. As Judge Wilkey observed (Pet. App. 37a n.17), PANE's reliance upon the italicized language is unavailing for it reflects only that the underlying environmental causes of social and psychological malaise should be considered. A fortiori there is no suggestion that social or mental ills that are not environmentally grounded are nonetheless environmental impacts for NEPA purposes.

to arise, although remote and speculative possibilities need not be addressed. Cf. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, *supra*, 435 U.S. at 551. To treat individuals' fears respecting the environmental consequences of agency action (and stress occasioned by those fears) as environmental effects of the federal action in their own right, as the court of appeals has done here, is tantamount to holding, contrary to settled law, that an agency does not discharge its obligations by taking a "hard look" at the environmental consequences of federal action.[19]

2. The decision of the court of appeals is contrary to decisions of every other court of appeals that has considered the issue, as well as a well-reasoned decision of the District of Columbia Circuit itself. The courts of appeals have uniformly recognized that psychological and socioeconomic effects that are not environmentally grounded are outside the scope of the analysis required by NEPA.

For instance, while requiring that a federal agency take cognizance of a broad range of urban environmental effects, including noise associated with construction of a federal detention center in close proximity to a dense residential setting (*Hanly* v. *Mitchell*, 460 F.2d 640, 647 (2d Cir.), cert. denied, 409 U.S. 990 (1972) (*"Hanly I"*)), the United States Court of Appeals for the Second Circuit has made it equally clear that effects lacking an environ-

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[19] The quintessentially non-environmental nature of the stress impacts alleged by PANE is reflected strikingly by considering the nature of measures, if any, that might be attempted to mitigate these effects. Given the fundamental role that mitigation plays in the NEPA process, see 40 C.F.R. 1502.14(f), 1502.16(h), 1503.3(d), 1505.2(c), 1505.3 and 1508.20, it is striking that, as Commissioner Hendrie observed (Pet. App. 82a, 89a; see page 8, *supra*), the alleged stress effects admit of no meaningful mitigation. To be sure, the Licensing Board suggested (11 N.R.C. at 304, 308), that mitigation is possible. Significantly, however, the actual measures identified—provision of an opportunity for airing of fears and installation of additional monitoring devices, assuming they would be effective, are themselves directed to respondents' consciousness, rather than the environmental effects of operation of TMI-1.

mental nexus are outside NEPA (*Hanly* v. *Kleindienst*, 471 F.2d 823, 833 (1972), cert. denied, 412 U.S. 908 (1973) ("*Hanly* II")):

> For the most part [plaintiffs'] opposition is based upon a psychological distaste for having a jail located so close to residential apartments * * *. It is doubtful whether psychological or sociological effects upon neighbors constitute the type of factors that may be considered [under NEPA].

Similarly, in terms that are fully applicable here, Judge Leventhal, writing for a panel of the District of Columbia Circuit, rejected the claim that an influx of low-income workers into a suburban location could constitute an environmental impact within the contemplation of NEPA (*Maryland-National Capital Park and Planning Commission* v. *Postal Service*, 487 F.2d 1029, 1037 (1973)):

> Concerned persons might fashion a claim, supported by linguistics and etymology, that there is an impact from people pollution on "environment," if the term be stretched to its maximum. We think this type of effect cannot fairly be projected as having been within the contemplation of Congress.[20]

To similar effect is *Breckinridge* v. *Rumsfeld*, 537 F.2d 864, 865-867 (6th Cir. 1976), cert. denied, 429 U.S. 1061 (1977). There the court rejected the claim that unemployment caused by closing of a military base was an environmental impact cognizable under NEPA, explaining that although "NEPA goes beyond * * * the 'physical environment' * * * factors other than the physical environment [are to be considered] * * * only when there exist[s] a primary impact upon the physical environment." Accord: *Image of Greater San Antonio, Texas* v. *Brown*, 570 F.2d

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[20] The court also indicated that some aesthetic effects of federal action, like psychological effects of federal action, are outside the scope of the class environmental effects of federal action cognizable under NEPA. *Maryland-National Capital Park and Planning Commission* v. *Postal Service*, 487 F.2d at 1038 & n.5.

517, 522 (5th Cir. 1978); *Como-Falcon Community Coalition, Inc.* v. *Department of Labor*, 609 F.2d 342, 345-346 (8th Cir. 1979), cert. denied, 446 U.S. 936 (1980); *Goodman Group, Inc.* v. *Dishroom*, 679 F.2d 182, 184-186 (9th Cir. 1982).[21] And several courts of appeals have specifically rejected the claim that social fears and anxieties arising from federal action must be addressed under NEPA, in the absence of an environmental effect. See, *e.g.*, *Nucleus of Chicago Homeowners Association* v. *Lynn*, 524 F.2d 225, 231 (7th Cir. 1975), cert. denied, 424 U.S. 967 (1976); *First National Bank of Chicago* v. *Richardson*, 484 F.2d 1369, 1380 n.23 (7th Cir. 1973); see also *Como-Falcon Coalition, Inc.* v. *Department of Labor*, 465 F. Supp. 850, 861-862 (D. Minn. 1978), aff'd, 609 F.2d 342, 345-346 (8th Cir. 1979), cert. denied, 446 U.S. 936 (1980).

The court of appeals recognized the force of the above-mentioned decisions, but sought to distinguish them by stressing the special "holocaust potential of an errant nuclear reactor" (Pet. App. 15a), and couching its holding in case-specific terms. But, as Judge Wilkey convincingly argued (*id.* at 41a-48a), there is no logical basis for confining the court's holding to the facts of this case; the

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[21] The rule of these cases is consistent with CEQ regulations. See page 19 note 14, *supra*. We underscore, however, that neither those regulations, nor the above cited cases—as we read them—require analysis of non-environmentally-grounded socio-economic effects of federal action. Rather, even if preparation of an EIS is required for independent reasons, there is no requirement that social and economic effects of federal action be canvassed unless they are proximately traceable to natural or physical environmental effects of the action. 40 C.F.R. 1508.14.

The court of appeals' reliance (Pet. App. 13a) on *Chelsea Neighborhood Associations* v. *Postal Service*, 516 F.2d 378, 388 (2d Cir. 1975), is misplaced, because the court below overlooked this limitation. In *Chelsea Neighborhood Association*, the court of appeals merely held that an EIS that had been prepared was inadequate because it failed to address social and psychological effects upon residents of a housing project alleged to arise directly from the unique physical form of the project.

cognizability of a class of effects under NEPA cannot turn upon their alleged severity (or mildness) in a particular case. And the court of appeals' cryptic explanation (*id.* at 16a) that "in contrast [to the foregoing cases], PANE is not asking the agency to evaluate the effect of 'people pollution' on the environment, but rather the effect of a governmental decision on human health," simply ignores the rationale of the conflicting decisions, *i.e.*, that NEPA requires only the analysis of environmental impacts.

3. The decision of the court of appeals threatens to increase substantially the burden of federal agency compliance with NEPA. To be sure, the decision of the court of appeals nominally went no further than to hold NEPA applicable to "post-traumatic anxieties, accompanied by physical effects and caused by fears of recurring catastrophe" (Pet. App. 16a-17a). But as Judge Wilkey pointed out in his dissent, the majority opinion has clear implications for a host of activities licensed or conducted by the Commission and other federal agencies (*id.* at 41a-48a).

If agencies must take account of stress that is not proximately traceable to an environmental effect of agency action under NEPA, forms of stress other than "post-traumatic stress" may also be cognizable, as may stress that is not accompanied by physical symptoms or that is caused by factors other than "fears of recurring catastrophe." Psychological stress contentions are not unique to TMI-1. Judge Wilkey noted four other NRC proceedings in which psychological stress contentions had been raised (Pet. App. 57a-59a), and others could now be added to that list.[22]

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[22] Responding to the uncertainty created by the court of appeals' holding, the Commission, on July 16, 1982, issued a policy statement providing guidance to its Licensing Boards and staff as to the treatment of stress issues in proceedings other than TMI-1. 47 Fed. Reg. 31762 (1982). The Commission directed Licensing Boards to exclude any contention that did not contain all three elements relied upon by the court of appeals: " 'post-traumatic anxieties,' "

More broadly, virtually every federal activity arguably generates psychological impacts; such impacts simply are not confined, as the court of appeals suggested, to nuclear energy. Examples of such activities include management of air traffic control, operation of National Airport, management of federal prisons, economic programs with their effects on life and livelihood, leasing of federal lands for coal mining, construction of dams, and construction and operation of military facilities. The amorphous nature of psychological effects, moreover, renders their assessment in all of these circumstances especially burdensome and subjective. Finally, as explained above, in discarding the requirement of an environmental nexus that limits NEPA obligations, the court of appeals has effected an extraordi-

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accompanying " 'physical effects,' " and the prior occurrence of a major accident at the site in question, giving rise to " 'fears of recurring catastrophe' " (*ibid.*). The policy statement embodied the Commission's view that, to date, the only accident serious enough to trigger a duty to evaluate psychological stress under NEPA was the TMI accident. The Commission's narrow reading of the court of appeals' decision permits the exclusion of psychological stress contentions from ordinary licensing proceedings, but as long as the court of appeals' decision stands, any Commission ruling excluding psychological stress contentions from a proceeding runs a substantial risk of reversal, for the reasons suggested by Judge Wilkey's dissent. Accordingly, the issuance of the Commission's policy statement does not significantly reduce the precedential importance of the court of appeals' decision. Because the Commission was confronted with stress contentions modeled on PANE's contentions in a host of pending proceedings, and was not free simply to disregard the court of appeals' decision, it was reasonable for the Commission to adopt a uniform rule to be applied pending final action by this Court, rather than simply allowing its licensing boards to interpret the decision of the court of appeals in possibly conflicting fashions. In formulating that interim guidance, it was reasonable for the Commission to accept at face value the qualifications embodied in the court of appeals' ruling, so as to give the narrowest possible effect to the court of appeals' ruling, which is believed to be erroneous. At the same time, the Commission believes, as does the United States, that the logical implications of the court of appeals' analysis are far broader.

nary expansion of the task of assessment established by that statute, potentially encompassing all of the non-environmental effects of federal actions that do affect the environment, as well as the health-related effects of actions not environmental at all.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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